FILED
OCT 21 1964
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

No. [redacted] 7

OCTOBER TERM, 1964.

THE HANNA MINING COMPANY,
NATIONAL STEEL CORPORATION,
HANSAND STEAMSHIP CORPORATION, and
THE HANNA FURNACE CORPORATION,

Petitioners,

vs.

DISTRICT 2, MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, an unincorporated association,
RAYMOND T. McKAY, its President,
MELVIN H. PELFREY, Secretary-Treasurer,
CHARLES E. LaPORTE, Vice President,
FRANK LECKIE, Field Representative, and
JOHN DOE AND RICHARD ROE, and other individuals whose names are unknown, pickets at Great Northern Railway Company Ore Docks, Superior, Wisconsin,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN.

JOINT BRIEF OF COLUMBIA TRANSPORTATION DIVISION OF OGLEBAY NORTON COMPANY AND INTERLAKE STEAMSHIP COMPANY, AMICI CURIAE.

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TABLE OF CONTENTS.

The Respective Interests of Columbia and Interlake 2

Argument ---------- 5

Conclusion ---------- 8

Appendix. Detailed Descriptions of the Various Proceedings Initiated Before, or Filed With, the NLRB by Columbia Against MEBA ---------- A-1

Cases.

MEBA v. Interlaks Steamship Company, 370 U. S. 173 (1962) ---------- 3, 4, 5, 6

Mark Nolan, Presiding Judge, etc., et al., 138 NLRB 576 ---------- 4

Ohio Power Co. v. NLRB (6th Cir.), 176 F. 2d 385, 387-8, cert. den. 338 U. S. 899 ---------- 5

San Diego Building Trades v. Garmon, 359 U. S. 236 - 4, 6

Statutes.

National Labor Relations Act, as Amended, 29 U. S. C. A. Section 151 et seq.

Section 2(3), 29 U. S. C. A. Section 152(3) ---- 3

Section 2(11), 29 U. S. C. A. Section 152(11) ---------- 2, 3, 5

Section 8(b)(4)(B), 29 U. S. C. A. Section 158 (b)(4)(B) ---------- 3, A-1, A-2, A-4

Section 8(b)(7)(C), 29 U. S. C. A. Section 158 (b)(7)(C) ---------- 3, A-1, A-2, A-4

Other Authorities.

Rules of the Supreme Court of the United States, Rule 42, Paragraph 1 2

Sen. Rep. No. 105, 80th Cong., 1st Sess., pp. 5, 28 ... 5

House Rep. No. 245, 80th Cong., 1st Sess., pp. 13, 17 5

Statement of Manager of Bill on Floor of Senate, 93 Cong., Rec. 3836 5

In the Supreme Court of the United States

No. 527.

OCTOBER TERM, 1964.

THE HANNA MINING COMPANY,
NATIONAL STEEL CORPORATION,
HANSAND STEAMSHIP CORPORATION, and
THE HANNA FURNACE CORPORATION,

Petitioners,

vs.

DISTRICT 2, MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, an unincorporated association, RAYMOND T. McKAY, its President, MELVIN H. PELFREY, Secretary-Treasurer, CHARLES E. LaPORTE, Vice President, FRANK LECKIE, Field Representative, and JOHN DOE AND RICHARD ROE, and other individuals whose names are unknown, pickets at Great Northern Railway Company Ore Docks, Superior, Wisconsin,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN.

JOINT BRIEF OF COLUMBIA TRANSPORTATION DIVISION OF OGLEBAY NORTON COMPANY AND INTERLAKE STEAMSHIP COMPANY, AMICI CURIAE.

Columbia Transportation Division of Oglebay Norton Company (hereinafter called "Columbia") and Interlake Steamship Company (hereinafter called "Interlake") have severally obtained and filed with the Clerk of this Court the written consents of all Petitioners and all Re-

spondents in the above-entitled action to file this Brief as *Amici Curiae*. Rule 42, Paragraph 1 of the Rules of the Supreme Court of the United States.

THE RESPECTIVE INTERESTS OF COLUMBIA AND INTERLAKE.

1. Like the Petitioners in No. 527, *supra*, Columbia and Interlake severally own and operate[1] fleets of large cargo ships which transport iron ore, coal and other bulk commodities in interstate and foreign commerce on the Great Lakes. In order to operate its fleet each *amicus* necessarily employs several engineers on each of its ships, all of whom are supervisory employees as that term is defined in the National Labor Relations Act, Section 2(11), 29 U. S. C. A. Section 152(11).

2. During the 1964 shipping season on the Great Lakes, Columbia's ships have been periodically subjected to picketing by Marine Engineers Beneficial Association (hereinafter called "MEBA") similar to the picketing of Petitioners' ships involved in the pending case, that is, picketing to coerce (1) the engineers employed on Columbia's ships to join MEBA, (2) Columbia to require its engineers to join MEBA as a condition of continued employment, and (3) Columbia to recognize MEBA as the collective bargaining agent for its engineers. During the picketing, all engineers of Columbia continued to work for Columbia and refused to honor the picket line of MEBA. Columbia had filed a Representation Petition with the Regional Office in Cleveland of the National Labor Relations Board (hereinafter referred to as the "NLRB") in June of 1962 stating that MEBA claimed to be the bar-

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[1] Interlake is the owner of its fleets of cargo ships, but the ships are operated by Pickands Mather & Co.

gaining representative of all licensed officers in the Engineering Department aboard vessels of Columbia. The Regional Office and the Washington Office of the NLRB dismissed the Petition because, after investigation, it appeared that the employees in the proposed units were not employees within the meaning of Section 2(3) of the NLRA, 29 U. S. C. A. ¶ 152(3) but, instead, were supervisors as defined in Section 2(11) of the NLRA, 29 U. S. C. A. ¶ 152(11). During the 1964 shipping season, Columbia had filed unfair labor practice charges against MEBA in the 3rd Region (Buffalo, New York), the 8th Region (Cleveland, Ohio) and the 18th Region (Duluth, Minnesota) alleging violations of Section 8(b)(4)(B) and Section 8(b)(7)(C) of the National Labor Relations Act, 29 U. S. C. A. ¶ 158(b)(4)(B) and 29 U. S. C. A. ¶ 158(b)(7)(C). The Regional Director in each of the three Regions refused to issue a complaint and upon Request for Review with the General Counsel of the NLRB in Washington, the General Counsel sustained the rulings of the Regional Directors.

For a more detailed description of the various proceedings initiated before, or filed with, the NLRB by Columbia against MEBA, see Appendix, *infra*, A-1.

3. In *MEBA v. Interlake Steamship Company*, 370 U. S. 173 (1962), this Court reversed the decision of the Minnesota Court which had enjoined MEBA from picketing Interlake ships to organize the engineers employed upon such ships upon the grounds that such picketing violated the statutes and public policy of Minnesota. The rationale of this Court's decision was that the Minnesota Courts could not exercise their jurisdiction to enforce the statutes and public policy of the State of Minnesota, which regulated labor relations between supervisors and their employees, unless and until the NLRB "had actually de-

termined the underlying issue upon which its jurisdiction depended, i.e., that MEBA was a 'labor organization' for purposes of § 8(b) of the Act" (l.c. 184).

After the foregoing case had been remanded to the District Court of St. Louis County, Minnesota (the Trial Court), the Presiding Judge of that Court (Nolan, P. J.) filed a Petition with the NLRB for an Advisory Opinion to determine the jurisdictional issue which, under the decision of this Court had to be decided by the NLRB before the Minnesota Courts could exercise their jurisdiction to enforce the applicable statutes and public policy of that State. Columbia filed a Motion to Intervene in the Petition for Advisory Opinion filed by Judge Nolan with the NLRB under the Rules and Regulations of the NLRB. The NLRB refused to issue an advisory opinion upon the ground that its Rules for the issuance of advisory opinions do not apply. *Mark Nolan, Presiding Judge, etc. et al.*, 138 NLRB 576.

4. The employment of engineers (all of whom are supervisory employees) on each ship of Columbia and Interlake is indispensable to the carrying on of their respective businesses. As the Supreme Court of Wisconsin has construed and applied the decisions of this Court in *San Diego Building Trades v. Garmon*, 359 U. S. 236 and *MEBA v. Interlake Steamship Company*, 370 U. S. 173, neither Columbia nor Interlake has any remedy whenever MEBA decides to picket their respective ships for the purposes (1) of coercing their supervisory engineers to join MEBA and (2) of coercing Columbia or Interlake (a) to require such engineer employees to join MEBA as a condition of continued employment and (b) to recognize MEBA as the collective bargaining agent for such engineers; and their respective businesses are subject to irreparable loss at the whim and caprice of MEBA. Con-

sequently, Columbia and Interlake respectively have a vital interest in having this intolerable situation authoritatively resolved and corrected by a decision of this Court.

ARGUMENT.

A. In 1947, the Congress amended the National Labor Relations Act (hereinafter called "NLRA") for the express, and explicitly stated, purpose of excluding labor relations between supervisors and their employers from Federal regulations and of restoring this area of labor relations to the several States. Section 2(11), 29 U. S. C. A. ¶152(11); *MEBA v. Interlake Steamship Company*, 370 U. S. 173, 178, fn. 5; *Ohio Power Co. v. NLRB* (6th Cir.), 176 F. 2d 385, 387-8, cert. den. 338 U. S. 899; Sen. Rep. No. 105, 80th Cong., 1st Sess., pp. 5, 28; House Rep. No. 245, 80th Cong., 1st Sess., pp. 13, 17; Statement of Manager of Bill on Floor of Senate, 93 Cong. Rec. 3836. Congress knew that no employer could have "supervisory personnel" unless he also had "supervised employees" and that labor relations with supervised employees would continue to be under the NLRA. Manifestly, Congress in providing that "Nothing herein" shall prohibit supervisors from becoming or remaining a member of a "labor organization," did not intend to nullify its primary and explicit intent to restore the regulation of labor relations between supervisors and their employers to the several States and, *a fortiori*, in cases where employers or a State Court had exhausted every available avenue in attempting to obtain an adjudication by the NLRB. Manifestly, Congress did not intend to create a situation in which labor relations between supervisors and their employers would not be, and could not be, regulated either by the States or by the NLRB.

1. Nevertheless, the Supreme Court of Wisconsin has construed and applied the decisions of this Court in the *Garmon* and *Interlake* cases in such a way as not only to nullify the intent of Congress but to place labor relations between supervisors and their employers outside of all law, State or Federal. The *Garmon* case involved labor relations between non-supervisory employees and their employers and is clearly inapposite to picketing which is directed solely and expressly to organizing supervisory employees. While the *Interlake* case did involve picketing which was directed solely and expressly to organizing supervisory employees, that decision cannot, we believe, be properly construed as holding that, even though an employer has exhausted all available avenues in attempting to obtain an adjudication by the NLRB, State Courts cannot exercise their jurisdiction to enforce the statutes and public policy of their respective States with the result that such activities are subject to no regulation whatever. Yet, under the decision of the Supreme Court of Wisconsin in this case, any labor organization could picket any employer for the purpose of forcing that employer to recognize it as the bargaining representative of the employer's supervisory or even executive personnel and that employer would have to (1) recognize the labor organization as the bargaining agent or (2) suffer irreparable losses caused by the picket lines at the employer's place of business, or (3) go out of business.

B. If the Supreme Court of Wisconsin correctly construed and applied the decision of this Court in *MEBA vs. Interlake Steamship Co., supra,* then we respectfully, but earnestly submit that this Court should grant certiorari to reconsider the *Interlake* decision and correct a disastrous situation which, we are confident, could not have been intended or foreseen by this Court when the *Inter-*

lake decision was rendered. A reconsideration of that decision should include the circumstance that the intent of Congress can be as effectively nullified by imposing conditions precedent to the exercise of State jurisdiction which are so burdensome or time consuming that, as a practical matter, both the right to invoke and the power to exercise State jurisdiction over this area of labor relations is rendered illusory. Keeping in mind that the out-of-pocket expenses of "operating" one large cargo ship is approximately $6,000.00 a day while it rides at anchor immobilized by an unlawful picket line, a holding that State Courts must stay their hand while an employer futilely pursues illusory and non-existent remedies before the NLRB as effectively destroys State regulation and the rights of supervisory employees and their employers under the State statutes as would an explicit refusal by this Court to recognize, or permit the enforcement of, the Congressional intent to restore this area of labor regulations to the several States.

C. Settlement of the foregoing questions by this Court is plainly required by the public interest. Since every business of substantial size must deal with the problem of labor relations with supervisory employees, their importance is obviously nationwide. Indeed, in relation only to the Petitioners, Columbia, Interlake and other similar transportation companies, such questions have a great national importance because the iron and steel segment of the national economy depends in large part upon the transportation of iron ore, limestone and coal and bulk commodities on the Great Lakes.

CONCLUSION.

For the reasons hereinbefore stated, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX.

OUTLINE OF THE STATUS OF THE REPRESENTATION PETITION AND UNFAIR LABOR PRACTICE CHARGE FILED WITH THE NLRB BY COLUMBIA AGAINST MEBA.

1. On June 14, 1962, Columbia filed a Representation Petition with the NLRB (8th Region, Cleveland, Ohio) stating that MEBA claimed to be the bargaining representative of all licensed officers in the Engineering Department aboard vessels of Columbia. On June 27, 1962, the Regional Director made the following order:

> "As a result of the investigation, it appears that, because the employees in the proposed unit are not employees within the meaning of Section 2(3) of the Act, being employed as supervisors as defined in Section 2(11) of the Act, further proceedings are not warranted at this time. I am, therefore, dismissing the Petition in this matter."

On July 5, 1962, Columbia filed with the NLRB in Washington a Request for Review and asked the Board to return the case to the Regional Board and order of the Regional Director to determine whether or not the Union is a "labor organization" as defined in the NLRB of 1947, as amended, with respect to the relationship between MEBA and Columbia.

On August 6, 1962, the NLRB ruled that the Regional Director's dismissal of the Petition was warranted.

2. On April 20, 1964, Columbia filed an unfair labor practice charge against MEBA alleging violations of Section 8(b)(4)(B) (Case No. 3-CC-277) and Section 8(b)(7)(C) (Case No. 3-CP-76) of the NLRB with the 3rd Region of the NLRB (Buffalo, New York).

On May 7, 1964, the Regional Director of the 3rd Region refused to issue a complaint.

3. On May 4, 1964, Columbia filed an unfair labor practice charge against MEBA alleging violations of Section 8(b)(4)(i)(ii)(B) and (C) (Case No. 8-CC-214) and Section 8(b)(7)(C) (Case No. 8-CP-53) with the 8th Region of the NLRB (Cleveland, Ohio).

On May 28, 1964, the Regional Director refused to issue complaints in both cases.

4. On May 12, 1964, Columbia filed an unfair labor practice charge against MEBA and alleged violations of Section 8(b)(4)(i)(ii)(B) (Case No. 18-CC-152) and Section 8(b)(7)(C) (Case No. 18-CP-39), with the 18th Region of the NLRB (Duluth, Minnesota).

On May 28, 1964, the Regional Director refused to issue complaints in both cases.

5. On June 20, 1964, Columbia filed a Request for Review with the General Counsel of the NLRB in Washington with respect to the decisions of the Regional Directors in the 3rd, 8th and 18th Regions as set forth above. In each of the Requests for Review, Columbia requested the General Counsel to:

(1) Remand these cases to the Regional Director with directions to investigate the status of the organizations involved and determine whether or not they are "labor organizations" within the meaning of the Act and thus subject to the jurisdiction of the Board; or

(2) If the General Counsel refuses to remand these cases, that the General Counsel review the decisions of the Regional Directors and determine whether the organizations charged with violation of the Act are "labor organizations" within the meaning of the Act; or

(3) If the General Counsel finds that MEBA is not a "labor organization" within the meaning of the Act, these cases should be dismissed for that reason alone or if

it is found that MEBA is a "labor organization" within the meaning of the Act, he should review the evidence in these cases and either affirm or reverse the decisions of the Regional Directors; or

(4) If the General Counsel decides that such determination is unnecessary in these cases, that he should review the evidence and either affirm or reverse the decisions of the Regional Directors.

6. On July 29, 1964, the General Counsel of the NLRB in Washington affirmed the decisions of the Regional Directors in all cases. The following is the decision made by the General Counsel:

> "Your appeals from the Regional Directors' refusals to issue complaints in the captioned cases, charging violations under Section 8 of the National Labor Relations Act, have been duly considered.
>
> "This office sustains the rulings of the Regional Directors. It was concluded that, inasmuch as the individuals which MEBA and/or District 2, MEBA, sought to represent were supervisors within the meaning of Section 2(11) of the Act who did not currently have a certified collective bargaining representative, Sections 8(b)(7)(C) and 8(b)(4)(C) were deemed inapplicable to the picketing involved. It was further concluded that, since the picketing conformed to the standards of lawful conduct set forth in *Moore Dry Dock Company*, 92 NLRB 547, and in the absence of any probative evidence that the picketing was actually aimed at achieving objectives over and beyond those incidental effects normally flowing from legitimate primary picketing, insufficient basis existed for an 8(b)(4)(i) and (ii)(B) finding. Cf. *Pure Oil Co.*, 84 NLRB 315; *Interborough News Company*, 90 NLRB 2135; *Milwaukee Plywood Company*, 126 NLRB 650, affd. 285 F. 2d 325 (C. A. 7); and *United Steelworkers of America, AFL v. NLRB*, 376 U. S. 492.

"Accordingly, and since there was no impropriety in the Regions' actions in dismissing these cases on the merits without specifically passing on the issue as to whether District 2 is a labor organization within the meaning of Section 2(5) of the Act (see *Building & Construction Trades Council of Ventura County*, 147 NLRB No. 124, footnote 1), further proceedings herein were deemed unwarranted.

"Very truly yours,

"ARNOLD ORDMAN
"General Counsel

"BY IRVING M. HERMAN
Director, Office of Appeals"

7. On July 17, 1964, Columbia filed an unfair labor practice charge against MEBA alleging violations of Section 8(b)(4)(i)(ii)(B) and (C) (Case No. 7-CC-264) and Section 8(b)(7)(C) (Case No. 7-CP-53) with the Regional Director of the 7th Region of the NLRB (Detroit, Michigan).

On August 18, 1964, the Regional Director refused to issue a complaint in this case on Section 8(b)(7)(C). No action as yet has been taken on the other charge.

8. On September 14, 1964, Columbia filed a Request for Review of the charge under Section 8(b)(7)(C) with the General Counsel of the NLRB in Washington. No action has been taken on this Request by the General Counsel.